

not have been done if they had meant to decide the whole controversy, and to restore to the appellant without restriction and at once, the subject in dispute.

Supposing it possible, nay, probable, that if the creditors of E. M. Kerr & Co., had been parties to the record before the Court of Appeals, a different decision would have been made, it follows, that as these creditors are now here upon the invitation of the court itself, it would be proper, at least for the present, to abstain from passing any order which may seriously endanger their interests. In a very short time, it is believed, the Court of Appeals will deliver their opinion, when the doubts which now surround this subject will be removed.

The order which the court will pass, whilst it will secure the property for those who may be entitled to it, will expose no parties to danger.

The propriety of the order which the Chancellor, under the circumstances thinks it right to pass, would seem to be vindicated by another consideration.

Attachments, as we have seen, have been laid in the hands of the receiver, one of them prior to, and the other since, his authority was revoked, and it would, perhaps, be presumptuous in this court to pronounce absolutely upon the validity of these proceedings. Should they be sustained by the courts in which they are pending, and this court, by its order should take the property from the receiver, and hand it over to the trustee of Kerr, the former might be involved in heavy loss. It is surely the duty of this court to protect its officer from loss when acting in the discharge of his duty, and especially when it can be done without exposing the rights or interests of others to the slightest risk.

It has been urged in the argument, that the right of the petitioner, as the permanent trustee in insolvency of Kerr, to the possession and administration of this fund, is superior to any which he himself could have claimed, if he had not applied for the benefit of the insolvent laws; and the case of *Alexander vs. Ghiselin* is relied upon in support of this position.

That case might have a controlling effect, if it did not appear,